

REMARKS

Rejections Under 35 U.S.C. §103

Claims 17-21, 23 and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Youssefyeh, et al. (U.S. 5,968,519) in view of Mantelle, et al. (U.S. 6,562,363). The rejection is respectfully traversed. Applicant's remarks presented in the reply of November 7, 2008, regarding this rejection, are incorporated by reference in their entirety.

Further, Applicant offers additional comments. Claim 21 recites that the active ingredient is a silicon gel. The Examiner states that the primary reference teaches the addition of silicones at column 15, lines 43-46. However, as the Examiner states, the addition of silicones is in the ointments, pastes, creams, or gels of the reference. There is absolutely no disclosure that such materials can be incorporated in a film-forming material as claimed. The Examiner states that the deficiency of the primary reference is for failing to teach that the film-forming carrier is nitrocellulose. This failing is made up by the secondary reference to Mantelle, et al. This combination of references fails to render obvious the claims for two primary reasons. While Mantelle, et al. indeed discloses a nitrocellulose film-forming carrier, the patent also discloses cellulose-containing film-forming carriers, such as propylcellulose, hydroxypropylcellulose, hydroxyethylcellulose, etc. Applicant has already shown by a Rule 132 Declaration, that the nitrocellulose as a film-forming carrier is superior to these other celluloses as disclosed in the primary reference and the secondary reference. Accordingly, the substitution of nitrocellulose film of the secondary reference, for those cellulose films of the primary reference, yields unexpected results

reference, for those cellulose films of the primary reference, yields unexpected results as shown by the Rule 132 Declaration. This is the antithesis of obviousness.

Regarding the Rule 132 Declaration, the Examiner states that Exhibit A shows no data that would represent the generic concept claimed. Thus, the Examiner states the claims are directed to a steroid whereas only a single corticosteroid has been presented. Also, the amount of the active ingredient compared in Applicant's data has not been claimed, nor are the present claims restricted to the time intervals of the Exhibit. The Examiner's comments do not fairly represent the showing of the 132 Declaration. All Applicant attempted to show was how various types of cellulose carriers would transmit an active ingredient, such as a steroid, onto the skin. Thus, numerous celluloses include methylcellulose, hydroxy methylcellulose, nitrocellulose, hydroxyethyl cellulose, and cellulose acetate were all tested with the same steroid, the same amount of steroid, and for the same time periods to determine whether the active ingredient could be transferred to the skin. Applicant clearly shows that the nitrocellulose had the best transdermal effectiveness. There is no reason to expect that other steroids would be different, nor is it reasonable for Applicant to put in a time limit. Clearly a 1-4 hour time limit is sufficient enough to test whether a carrier can allow an active ingredient to be incorporated into the skin. It was the active carriers which were the components being tested for transmitting an active ingredient, and it is likely that any active would yield the same results, and certainly any type of steroid would yield the same results as those shown. Accordingly, it is believed that the Rule 132 Declaration is sufficient to show that the film-forming carrier of nitrocellulose is an improved carrier of active components to the skin over other cellulose film carriers.

Secondly, Applicant has filed a Rule 131 Declaration showing that the claimed film-forming carrier with hydrocortisone for applying onto a skin for the treatment of scars, psoriasis, and eczema, was reduced to practice prior to the filing date of both Mantelle, et al. and the primary reference to Youssefyeh, et al. . The Examiner has dismissed this showing by stating that the declaration does not show establishment of the claimed invention. However, claims 19-25 are directed to a composition. The declaration clearly shows a composition containing nitrocellulose and a steroid. Further, the declaration clearly states prior to the filing date of both Mantelle, et al. and the primary reference to Youssefyeh, et al., that the composition tested was explicitly for the purpose for treating scars, eczema, and psoriasis. Accordingly, it is believed that the declaration clearly shows the reduction to practice of the claimed invention prior to the applied references. More importantly, Applicant does not have to show the reduction to practice of the entire claimed invention prior to the references, but only needs to provide evidence that Applicant possessed so much of the invention as is shown in the reference. Clearly, Applicant has shown a composition comprising an active such as a steroid in a nitrocellulose film carrier was practiced prior to the filing of Mantelle, et al. It is also believed the Declaration under Rule 131 is sufficient to show a film-former and active applied to skin for the purpose of treating scars, eczema, and psoriasis prior to Youssefyeh, et al. Accordingly, it is believed that at least Mantelle, et al. is not an effective reference against the claims, and Applicant believes further that neither is the primary reference properly applied.

For the above reasons, it is believed that the rejection of the claims over the combination of Youssefyeh, et al. and Mantelle, et al. is improper and should be withdrawn.

Claims 17-21, 23 and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Youssefyeh, et al. (U.S. 5,968,519) in view of Brandt, et al. (U.S. 6,627,216). The rejection is respectfully traversed.

It is requested that the remarks presented with regard to this rejection submitted in Applicant's response on November 7, 2008, be incorporated by reference in their entirety. Again, the Examiner admits that Youssefyeh, et al. does not teach the claimed nitrocellulose and applies Brandt, et al. as teaching a film-forming material applied to skin, which includes nitrocellulose. For the same reasons as stated above, this rejection is improper inasmuch as Brandt, et al. equates nitrocellulose with other cellulose film-former materials, such as ethylcellulose. Applicant has shown by a Rule 132 Declaration that alkyl and hydroxyalkyl cellulose films are inferior to nitrocellulose film in transmitting an active component into the skin. Accordingly, the substitution of nitrocellulose of Brandt, et al. for those celluloses of Youssefyeh, et al. yields results totally unexpected by either of the applied references. Again, the Rule 131 Declaration shows that Applicant reduced to practice a composition containing a steroid and nitrocellulose prior to Brandt, et al. and Youssefyeh, et al., and therefore neither of these references are properly applied against the instant claims. For the same reasons as expressed above, the Examiner's criticism of the Rule 132 and Rule 131 Declarations are not proper. The Examiner is again reminded that the Rule 131 Declaration only needs to show that part of the invention which the reference shows,

that being a nitrocellulose film-forming carrier containing an active. Applicant has clearly shown that he was in possession of such part of the invention prior to either of the applied references. Withdrawal of the rejection is respectfully requested.

Claims 22 and 24 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Youssefyeh, et al. (U.S. 5,968,519) in view of Herb, et al. (U.S. 5,534,246). The rejection is respectfully traversed, and Applicant incorporates by reference his arguments with respect to this rejection as presented in the reply filed on November 7, 2008.

It is again mentioned that neither of the applied references teach the use of nitrocellulose as a film-forming carrier, and, accordingly, the combination of references is improper due to the failure of disclosing part of the claimed invention. Applicant again reminds the Examiner that the Rule 131 Declaration even removes Youssefyeh, et al. as a reference for a composition containing a nitrocellulose film-forming carrier and an active ingredient, and believes that the Rule 131 Declaration clearly removes Youssefyeh, et al. as a reference against the method claimed since the exact purpose of the composition formed by Applicant was for treating scars, eczema, and psoriasis, as clearly shown in the exhibit with the declaration. Withdrawal of the rejection is respectfully requested.

Claims 17-21, 23 and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mantelle, et al. (U.S. 5,446,070) in view of Mantelle, et al. (U.S. 6,562,363). The rejection is respectfully traversed, and Applicant incorporates the remarks presented with respect to this rejection filed on November 7, 2008. The

Applicant has effectively removed the secondary reference to Mantelle, et al. as teaching a film-forming carrier of nitrocellulose both by a Rule 132 Declaration, which clearly shows the unequivalence of nitrocellulose, and by a Rule 131 Declaration whereby Applicant clearly showed that he reduced to practice a nitrocellulose film-forming carrier and an active ingredient as a composition and applied to skin prior to the effective filing date of the reference. Withdrawal of the rejection is respectfully requested.

Claims 17-21, 23 and 25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mantelle, et al. (U.S. 5,446,070) in view of Brandt, et al. (U.S. 6,627,216). The rejection is respectfully traversed and the arguments presented against this rejection in Applicant's response filed November 7, 2008, are herein incorporated by reference in their entirety. Again, the Examiner relies on the secondary reference to Brandt, et al. as teaching a nitrocellulose film-forming carrier. The Rule 132 Declaration clearly illustrates the unequivalence of nitrocellulose relative to other cellulose film-formers, and Applicant has removed the reference to Brandt, et al. as an effective reference against the claims by filing a Rule 131 Declaration. The Examiner's criticism of both declarations are improper for the reasons as stated above, and, accordingly, it is believed that the rejection is improper and should be withdrawn.

Claims 22 and 24 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mantelle (U.S. 5,446,070) in view of Herb, et al. (U.S. 5,534,246). The rejection is respectfully traversed for the same reasons as set forth in Applicant's response filed November 7, 2008. Mantelle does not disclose the use of nitrocellulose

as a film-forming carrier. Moreover, Herb, et al. does not disclose the use of nitrocellulose as a film-forming carrier. Accordingly, the combination of references does not teach each and every limitation of the claims, and therefore the rejection under 35 U.S.C. 103 is improper.

It is respectfully requested that the Examiner reconsider the criticism of the Rule 132 and Rule 131 Declarations, and, in particular, since the Rule 131 Declaration only needs to show that part of the invention which is shown in the references. Applicant's Rule 131 Declaration has removed the secondary teaching of Mantelle, et al. and Brandt, et al. and even the primary reference to Youssefyeh, et al. as effective references against the claims. In view of the above, it is believed that claims 17-25 patentably distinguish over the art of record, and Applicant respectfully requests favorable action on these claims.

Respectfully submitted,

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